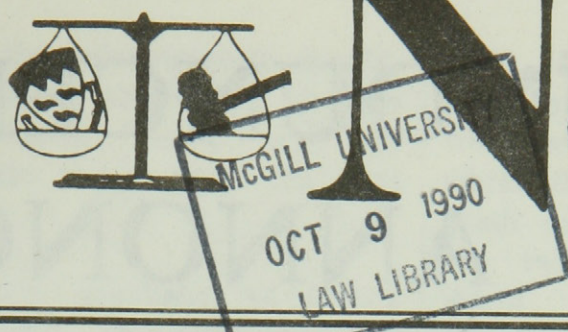


# Quid Novi



Vol. XI, No.6

MCGILL UNIVERSITY FACULTY OF LAW October 9, 1990  
UNIVERSITE MCGILL FACULTE DE DROIT le 9 octobre 1990

## MORAL DILEMMA REPLY:

### Should Philippe Rushton be allowed to teach?

Last week, the Quid editorial board asked you whether Philippe Rushton should be allowed to teach. Rushton is a psychology professor at the University of Western Ontario. He has theorized that Orientals are genetically superior to Whites and Whites genetically superior to Blacks. Despite protests, he has been permitted to teach his course, *Theory and Research in Personality*, on videotape.

Reply #1: by Marie Lussier, National IV

"Soap and education are not as sudden as a massacre, but they are more deadly in the long run." (Mark Twain)

Academic freedom is a principle to which we all owe a great deal. Within the university setting, tenure shields academics from pressures and restraints which could affect the work which they do and the opinions they express. The major rationale for tenure and academic freedom is that unfettered intellectual inquiry and the ability to state and defend unpopular ideas will advance basic knowledge and be

of benefit to society. This having been said, I am nevertheless of the opinion that Philippe Rushton should NOT be allowed to continue teaching. I feel that academic freedom is threatened, in this case, not by his being let go, but by his staying on.

I think it is important to consider Rushton's work in order to see the context in which he operates. Rushton has developed what he refers to as a gene-based evolutionary theory of r/K reproductive strategies. He  
Cont'd on p.5

## Law, Television and the Recession:

### A Smorgasbord of Exceedingly Random Thoughts

by Michael Kleinman,  
BCL III

Well, the reports are in! Some of this faculty's finest students have returned for yet another crack at the old grindstone after having spent most of the summer toiling away for the benefit of others - other lawyers, other lawyers' clients, and the like. They have come back to the dungeon-esque corridors of Chancellor Day Hall with tales

galore - stories of glory, of stimulating and fascinating research, and of rubbing shoulders with some of this country's finest barristers and solicitors. Behind this façade of ambitious pride and accomplishment, one can distinctly detect the rumblings of recessionary times. Political «events» (to put it politely) such as the failure of Meech, military happenings in the Middle

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# ANNOUNCEMENTS/ ANNONCES

**McGill Law Journal/La Revue de Droit de McGill**  
Les demandes d'adhésion à la Revue de Droit de McGill sont disponibles depuis le 4 septembre 1990. Please note that the applications (including the evaluation and short assignments that must be completed) are due October 12. Interviews will take place October 15-16. Information sheets and applications are available at SAO, or at the new Law Journal office in the basement at 3661 Peel.

**BOOKSTORE** Permanent hours, beginning the week of Sept. 17th 1990: Tues.: 8h30-10h30; Thurs.: 8h30-10h30. Anyone interested in managing the Law Bookstore next year, i.e. from January 1991 to December 1991, is invited to an information meeting on Wednesday, Oct. 10th at noon in the Bookstore.

**RES IPSA LOQUITUR** To all those interested in buying a copy of last year's yearbook: There are still a limited number available. Reserve your copy NOW by leaving me a note with your name and phone number in the mailbox at LSA. First come first served - so hurry: - Michael Kleinman, editor.

**John Henry Cardinal Newman Annual Lecture**  
The John Henry Cardinal Newman Annual Lecture was held on Friday, Oct. 5th. This year's speaker was Jean

Vanier, the founder of L'Arche. The title of Mr. Vanier's talk was «Is a University relevant today?». TODAY, Tuesday, Oct. 9, there will be a general discussion of Mr. Vanier's lecture animated by McGill professors at 17h30 in the Moot Court. As well, the St. Thomas More discussion group - law students and professors who meet on an infrequent basis to talk about spiritual values and the law - will meet on Wednesday, Oct. 17, 12h00, in room 202. Our discussion will centre on Mr. Vanier's lecture, the follow-up discussion animated by the professors, and a short article by Timothy S. Healy «Probity and Freedom on the Border: Learning and Belief in the Catholic University». Everyone is welcome, the article is available in the St. Thomas More box in the L.S.A. office. If you have any questions feel free to talk to Jon Quaglia, B.C.L. III.

**SPORTS COMMITTEE** All sports enthusiasts (non-athletes included!) interested in joining the Sports Committee meet Thursday, October 11 at 12:00 in the Student Lounge. We'll work primarily on the Law Games. Just in! **Canada Law Games** will be held January 23-27th, 1991 at the sunny, pastoral University of Western Ontario. Details to follow! P.S. historically this is an incredibly hip group of people.

**LSA MEETING** - Mercredi le 10

octobre à 12h00 dans la salle 200.

**ROCKING FOR THE RAINFOREST** - An LSA/AED sponsored concert will be held Oct. 11 in the Union Ballroom. All proceeds will be donated to the World Wildlife Fund in its efforts to save the rainforests. Our very own Cool Monsoons as well as three local bands will be performing. Come out and party for a good cause.

**ENVIRONMENTAL LAW CONFERENCE** - October 10-11: «Law and Policy for an Ecological Age». Il y aura 15 conférenciers, parmi lesquels se trouveront plusieurs dirigeants du mouvement environnemental canadien.

**LEGAL THEORY WORKSHOP** - Friday, Oct. 12: Professor Mark Tushnet of Georgetown University will give a talk on «Critical Legal Studies: A Political History».

**McGILL LEGAL INFORMATION CLINIC SEMINAR SERIES** - Everyone welcome! Wednesday, Oct. 10, 14h00, room 202: «Immigration law: live the adventure», with Me Richard Kurland, Véronique Bélanger and Peter Golden.

**REVUE DE DROIT MCGILL LAW JOURNAL** - Volume 35 (3) is now available at Sadie's.

!!!!



## THE ARMCHAIR CONDUCTOR

by Drew Berman, LL.B. III

"Classical Music: When It Was and Who Was There"

A common misconception about classical music persisting to this day can be illustrated by the following conversation:

Bob: So Chuck, how about Tchaikovsky's 5th Symphony?

Chuck: Yup, I love classical music.

Bob: And how about Mozart's "Jupiter" Symphony?

Chuck: Yup, I really love that classical music.

Bob: And how about Bach's Concerto for Two Violins?

Chuck: Yup, I really do love that classical music.

To put the misconception simply, the thrust of the matter consists of confusing some sort of symphonic music with classical music.

Technically speaking, of Chuck and Bob's conversation only Mozart could truly be considered as belonging to the Classical Period; that is, understanding this period to be a time loosely lodged between the Baroque and the Romantic. However, such neat and clear-cut categories are rarely satisfactory and musical history is anything but straight-forward. So, let's attempt to clarify this fuzzification (superficially if nothing else, bearing in mind that a detailed description of each period is beyond the scope of this article) and get hopping, chronologically speaking, with:

The Baroque Period: Experts generally set the Baroque Period between the years 1600 and

1750 if, for no other reason, that the turn of the 17th century witnessed the birth of opera while the 1750's witnessed the death of both Bach and Handel, the two being considered the major proponents of the Baroque. Others include Vivaldi, Telemann and Purcell.

The Classical Period: For those into dates, 1750 to 1830 are those most often agreed upon for the Classical Period. More specifically, the term is usually used to refer to "The Vienna Four": Haydn, Mozart, Beethoven and Schubert in the years 1780 to 1828.

Each composer mastered the principle genres of the period namely, the sonata, quartet and symphony. The influence and renown of each of the composers permeated Europe, as opposed to the regionalism of Bach (Germany) and Handel (England), thus casting a European tenor to

Cont'd on p.8

## After dark, my sweet

by Colleen O'Brien, LLB III

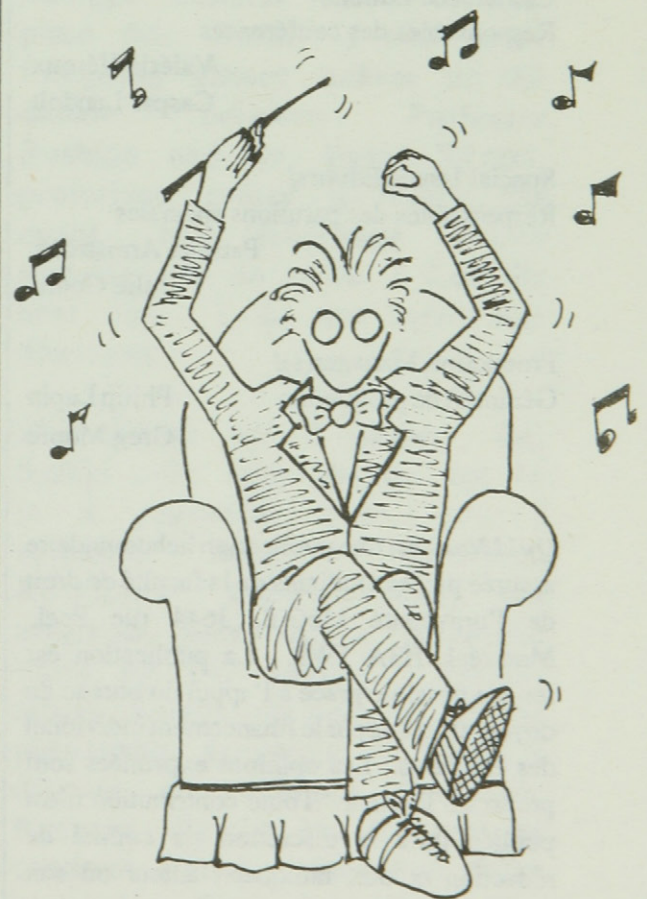
Buying a ticket is much like entering a lottery - you are occasionally rewarded for your persistence with an unexpectedly good film. Such was my hope when, a few Saturday evenings ago, I attended James Foley's After Dark, My Sweet.

The plot is quite standard: an ex-boxer turned drifter meets an attractive widow just in time to ensure the crystallization of a kidnapping scheme being engineered by her husband's best friend. You may surmise

from these essentials that the movie is a thriller, heavy on both action and romance. Surprisingly, the focus of the film is neither of the above. Instead, it is limited to an intense study of a handful of self-destructive and parasitic characters, through which it ambitiously tackles themes of a rather existential nature.

Jason Patric portrays Kid Collins, the narrator and focus of the action, very much in the style of 50's detective film with its emotionless voiceovers. With his blank stare, bouncing

Cont'd on p.8





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## Jim's corner: Splitting the blame

by James Hughes, BCL III

What drove the Warriors to the barricades? It goes way beyond golf courses and Meech Lakes. It's about generations of dependence, the loss of self-reliance and the destruction of the pride of a nation.

Our territorial «reserve» system has been a subtler but no less effective form of apartheid than that practiced in the homelands of South Africa. For instance, the land on reserves cannot be alienated or mortgaged by its aboriginal inhabitants. This has been done in the name of preserving the land for the next era - how paternalistic.

The Indian Act is the codification of paternalism but, I submit, not the result of any bad faith or ulterior motives. I believe that long ago, our political leaders truly felt that by creating a mechanism by which reasonably large tracts of land would be «reserved» in perpetuity for the aboriginal peoples, the First Nations could not only continue to live in community and close to the land, but that they would also benefit from the Canadian tax dollars that would build schools, hospitals and provide other social services.

But the land was too little to continue to live in a subsistence culture, and the aboriginal peoples' rights to the land too restrictive to allow them to develop it either for its resources (ex: timber) or its industry (ex: it can't sell parts

of the land to business and receive royalties or taxes therefrom).

Every additional Canadian dollar thrown at the First Nations was another bullet in a dying race. By having no need to care for themselves, many turned to drinking and crime. Some tried the courts or the political and media routes, but no one listened. Concurrently, not one aboriginal leader ever suggested that the «taps» be turned off. So the money continued to pour in.

This leads me to 1990 when the desperation has climaxed and real solutions are sought. Let me suggest one: endow the First Nations with full ownership over reasonable amounts of territory and «turn the taps off». Give them the land and treat them as the (increasingly) educated and equal people that they are. If there's not enough land to allow them to return to a subsistence

Cont'd on p.5

Eh oui! Votre Quid est à la mode. Grâce aux efforts déployés par le comité de rédaction de votre Quid, nous avons pu obtenir à bon prix (soulignons-le) du papier recyclé, nous permettant ainsi de suivre le mouvement écolo. Saviez-vous que cela constituait un luxe? En effet, il nous en coûtera plus cher pour chaque numéro. Mais n'est-ce pas là la raison d'être du Quid, s'associer à de grandes idées!



### Jim's Corner Cont'd from p.4

culture, so be it. I'm afraid such glorious forms of living are a thing of the past.

Finally, let's all move beyond this «who is to blame» phase. We, the white people, didn't have the foresight to see the consequences of the Indian Act and the aboriginal peoples never said «No». Let's split the blame and solve this thing.

### Moral dilemma Cont'd from p.1

claims that a continuum of reproductive strategies can be distinguished, ranging from the production of large numbers of offspring provided with minimal care (r), to the production of few offspring nurtured intensively (K). Rushton proposes that reproductive strategies involve a trade-off between sex cell production and social behaviours such as intelligence, law-abidingness and sexual restraint. Since sex cell production is lower at the K end, K-selected species are more intelligent and possess higher social skills. While all humans are at the K end of the spectrum, Rushton believes that some are more so than others, namely that Orientals are more K-selected than Whites and Whites more than Blacks. On this basis, he claims that Orientals are more intelligent than Whites, who are allegedly more intelligent than Blacks. He also concludes that Orientals are more inclined than Whites to a greater frequency of inhibitory disorders such as low sexual excitement and premature ejaculation and to a lower frequency of sexually transmitted diseases, including AIDS. He also concludes that

Blacks are inclined to a greater frequency of uninhibited disorders such as rape and unintended pregnancy.

Rushton is not the first to have attempted to use so-called scientific arguments to rank racial groups. Samuel Morton, a Philadelphia physician known, in his time, as the great objectivist of American science, collected human skulls to support his hypothesis that races can be ranked on the basis of brain size. His data were eventually demonstrated to have been fudged and, when the appropriate corrections were brought, showed that no significant differences existed between races. Rushton has also compared the brain sizes of different races and claims to have found that Orientals have larger brains than Whites, which in turn are alleged to have larger brains than Blacks. He concludes that this ordering can be explained by his gene-based evolutionary theory.

Reductionist biology and scientific racism have, for a long time, served institutional needs. Humans have been "mismeasured" to provide the weapons with which the criminal justice system, the educational system and immigration authorities, among others, could legitimately classify, repress and exclude those within their purview. The bias displayed in "scientific proof" of racial inferiority is fostered in the social and cultural attitudes of our time and is in turn used as the basis for social policies.

Whether or not racist intent can be attributed to Rushton is, however, not conclusive of the issue. What is conclusive is the

fact that his work has been condemned by his peers as not meeting the standards of truth to which all academics must adhere. His methodology has been shown to be flawed and the interpretation which he has applied to his results, self-serving. He should clearly not be allowed to hold students hostage to beliefs which he has shown himself unable to defend vis-à-vis the rest of the scientific community. Academic freedom must be used to seek the truth and not to detract from it, for its value lies exclusively in the wisdom with which it is exercised.

### Reply #2: by Hanson Hosein, LL.B. II

Having once been a student at the "sinsiter" University of Western Ontario (as the editors of the Quid qualified it), I distinctly remember the entire Philippe Rushton mess that took place that winter. I also recall foregoing choice tickets to the debate between Professor Rushton and Dr. David Suzuki, preferring rather to catch the event on television while studying for an exam I had the next day. I do not regret this decision.

The debate was a sham. Dr. Suzuki once more proved that he is a journalist first, and a scientist last. Professor Rushton's theory was not attacked once on a scientific basis by Dr. Suzuki. Rather, moral outrage seemed to be the prevailing argument. Today's dispute on whether Professor Rushton should be allowed to continue teaching does not differ in quality from the debate that

Cont'd on p.6



Cont'd from p.5  
night.

Professor Rushton should be allowed to continue teaching. This is not a situation such as the one in Keegstra where a high school teacher was telling his teenage students that the Holocaust never took place. Students taking Professor Rushton's course are upper-year university students whose minds are quite capable of critically evaluating information presented to them. Advocating his theory has obviously not placed Professor Rushton in criminal jeopardy for "wilfully spreading hatred". Nor has he been condemned for wilfully publishing a statement that he knew to be false and that would cause injury to the public interest. It is an academic theory, and, like all theories, it must be soberly and thoughtfully discussed, debated and criticized.

Evaluating what the public interest is proves to be a difficult task. Galileo was censored by the Catholic Church for his theory that the earth revolved around the sun and not vice versa. Today we know this as the truth. I am not promoting Professor Rushton's theory as truth. In fact, this may be an irrelevant distinction. Should the theory be proven to be false, the author will have been persecuted for having had the gall to explore the territory of biological racial differences when it was not politically fashionable to do so. But what if the theory, or other similar research is proven one day to be true? Should we suppress the information in the name of social balance in this fragile multicultural society we have

tried so hard to create?

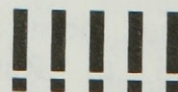
Discouraging ideas that may be socially or politically dangerous is far more injurious to society than allowing certain people full of moral outrage or ulterior motives from arbitrarily dictating what we are allowed to hear. If there are any possible grounds for the dismissal of Professor Rushton, it should be for academic and scientific incompetence, not for investigating socially undesirable questions.

Reply #3: excerpt by  
Alissa Malkin, LL.B. II

Controversial ideas such as Rushton's must be allowed to be expressed. But their potentially harmful effects cannot be completely ignored. Expression of notions of racial superiority, by a professor, in a classroom setting, is likely to feed into and promote grassroots racism; this is likely to have extremely harmful effects upon certain members of society. For this reason, regulation of the expression of Rushton's ideas to the proper arena for their debate would constitute a justifiable limit to freedom of expression.

Reply #4: excerpt by  
James Hughes, B.C.L. III

Anybody who is funded by our tax dollars should not be allowed to enlist young minds in the cause of hatred.



Law & TV  
Cont'd from p.1

East and South Africa, as well as the foreseeable effects of cyclical economic trends and Tory fiscal policy have caused businesses and investors to tighten their purse strings in an effort to survive the impending «crunch».

Law firms, as several of you may have discovered in the last number of months, are, indeed, businesses. Surprisingly, most law firms, I would imagine, are far more concerned with cash flow and client base than with *lésion entre majeurs*; the problems and questions posed in relation to the family patrimony, thanks to Bill 146, are only slightly more significant. Tales of horror and woe have suddenly begun to emanate, particularly from that smoggy metropolis due west down the 401, that articling students and junior lawyers do not enjoy the relative job security that their predecessors did in the previous decade. This brings me, albeit in an extremely roundabout way, to the point of this prose: The only way to stop the system from churning out more and more lawyers is through the greatest medium of all - television - which, I submit, is largely responsible for the sharply increased numbers of lawyers, law students and, obviously, applications to law schools.

Let's reminisce for a moment. In the not too distant past, when our favourite TV characters came into contact with «the law», it was primarily through the police force; remember Adam 12 or CHIPS? (I simply must evoke memories of Erik Estrada for all of you who remain, to this day, Cont'd

Cont'd on p.7



Cont'd from p.6

clandestine fans of his). The only program which focused on the life and times of lawyers was, and still is, Matlock. Virtually overnight, the glamour, power and sex appeal of a legal career has exploded into a plethora of television shows, to wit (!), L.A. Law, Street Legal and Law and Order. Clearly, the main reason behind the burgeoning number of lawyers and law students in North America is due to fine television programs such as these.

Let's recap. Not only are we, collectively, faced with a recession (which will inevitably mean slimmer job opportunities, and even slimmer salaries), but we must acknowledge the ever-growing tide of lawyers-to-be hot on our heels. The solution? Easy as pie. Convince the television networks to modify their programming! Cancel all programs which glorify the legal profession! Show them that despite ample evidence to the contrary, New Chancellor Day Hall is air-conditioned! Describe in detail the horrors of course «drop/add» period and see if they can figure out the «Drop 2, Add 1» rule! Explain how one feels when the marks are posted - and then how one feels after actually looking! What about the first-year moot? Sure, put that in as well.

Then look at the actual practice of law. Split the screen and show, on one half, at approximately 5:15 PM, the throngs of workers pouring out of office buildings across the continent. The other half will show summer students, stagiaires and, yes, real lawyers, gazing out a window (which could only be done by sneaking into a partner's office) morosely, only to sit down «to finally get some work done».

Describe the friendship between the six or eight articling students at some metropolitan mega-firm as the deadline approaches for the managing partner's announcement re: which two will be asked to stay on.

Ok, ok... I admit that none of this will likely make the coming recession go back into hiding until we all have a chance to make partner. Still, once the TV shows are changed to reflect life in the law, at least in the early years, a bit more accurately, the numbers of lawyers on this continent will dramatically decrease. Once our potential employers realize that pickings are becoming increasingly slim, the job offers will continue to roll in.

One problem remains. Lawyers, as a rule, may wield some power in the halls of government and business, but I fear that the domain of network television is still somewhat out of reach. Therefore, I propose that the ten (fifty?) largest law firms in Canada merge, and proceed forthwith to acquire ownership of either CBC or NBC. Once the federal competition watchdogs and the CRTC approve the transaction, some of the most ominous woes currently p[laguing the legal profession will vanish.

One last point. If you wish to help render more accurate the way in which the legal profession is portrayed on television, you may write to the Corbin Bernsen Relief Effort c/o Quid Novi. This Journal's editorial board will ensure that your funds are properly diverted.

\$\$\$\$\$

## ATTENTION !!

### FRIENDS OF THE ENVIRONMENT! LES AMIS DE L'ENVIRONNEMENT!

CONCERT-BÉNÉFICE

## ROCK FOR THE RAINFOREST

Featuring/Avec

\*THE COOL MONSOONS  
(Rock 'n Roll Party Music)

\*THE SCRAPS  
(Roots Rock Wildness)

\*THE WAYSTRELS  
(Celtic Rock 'n Roll)

ET/AND A SPECIAL GUEST

le jeudi 11 octobre à  
20h00

UNION BALLROOM  
Tickets \$5.00

Les profits seront remis  
au World Wildlife Fund

Tickets on sale at Sadie's  
ou demandez à vos  
président(e)s de classe!



After dark, my sweet  
Cpnt'd from p.3

boxer's gait and stiff-armed movements, Patric gives a quite convincing performance as an ex-fighter prone to violent outbursts, whose degree of sanity is perhaps the key question of the film. Rachel Ward, as Faye, an emotionally unstable but take-charge widow with a drinking problem, becomes his object of obsession. The two nicely complement one another: she is as quick, thin and possessed of effortless movement as he is slow, stocky and deliberate. «Uncle Bud», the ineffectual ringleader of a most unlikely kidnapping plot; the patronizing doctor with the unsettling smile who is bent on «helping» Collins; and Charlie, the sickly rich-kid kidnapping victim, round out the cast of pathetic characters.

Through the relationships and interactions of these five people for whom life has become a meaningless struggle, Foley attempts to examine various aspects of the human condition: the lack of personal direction, manifesting itself in drinking, wandering, crime and submissiveness; the loss of self-respect and trust; and, most obviously (often too obviously) the importance of being «needed».

Technically, these themes are underlined rather well. The shifting tensions between the characters and the intensity of emotions are communicated clearly through somewhat unusual camera work, consisting largely of almost claustrophobic closeups, blurred backgrounds and odd angles, as well as intermittent jarring flashes of light and sound.

The real shortcomings of the film are ultimately attributable to the script, or rather the novel by Jim

Thompson upon which it is based. As the film progresses, the inability of the characters to relate to one another or to gain the sympathy of the audience results in the loss of the intensity promised at the beginning. The audience never really obtains any additional insights into personalities or motives, particularly noticeable in relation to the kidnapping scheme. The presence of the young captive in Faye's house seems forgotten just as quickly by the audience as it apparently is by the kidnappers themselves, despite the fact that it is supposedly critical to the thematic and plot development.

In short, *After Dark, My Sweet* fails to live up to its unusually intriguing first few moments, notwithstanding great work by the actors involved. It's well worth waiting for the video version.



#### MORAL DILEMMA OF THE WEEK:

You are the leader of a mighty democratic superpower whose people believe they have a god-given right to consume energy. In a distant land, the King of a feudal state, whose government you find politically reprehensible, is taken over by a neighbouring dictator. The king's country was a reliable supplier of fossil fuels.

Do you prop up the King or do you leave him and his people to the dogs? (For the purposes of this exercise, you may assume we are talking about Iraq and Kuwait). Deadline is next Monday at noon (max 400 words).

Armchair Conductor  
Cont'd from p.3  
their music.

The Romantic Period: This period generally extends from the end of the 18th century to the early years of the 20th. Emphasis was placed upon emotion over reason, upon feeling over form, and upon sensation and technical experimentation. Recurring themes include the longing for natural splendour, the desire for national identity, and the mythic, the mystic and supernatural. Familiar names include Wagner, Tchaikovsky, Chopin, Berlioz and Liszt, amongst others.

Naturally, this brief survey barely scratches the musical history surface and it remains true that the best lessons in musical history come from listening. Until next time, happy listening!

# # #

## QUOTE OF THE WEEK

Prof. Martin Boodman  
on the Law and  
Economics Approach:

“I’m not a freak for efficiency. I don’t really care about efficiency. Otherwise I wouldn’t be teaching.”



# LAW AND POLICY FOR AN ECOLOGICAL AGE

by Julie Abouchar, LL.B. III

If we are entering an ecological age, as today's gurus are predicting, here is one way to get informed: attend **Law and Policy for an Ecological Age**, a conference taking place at the faculty this Wednesday evening and all day Thursday.

The theme of the conference is different approaches to environmental policy, and how they work in practice. What works better, and under what circumstances, environmental citizen rights or a piece of legislation, an international treaty or a grass roots change in values?

Elizabeth May will open the conference, Wednesday evening followed by a wine and cheese reception. Among her many accomplishments, Ms. May is the author of Paradise Won: the Struggle for South Morsey, and recipient of a UN Environmental Program Award.

Thursday will open with a panel discussion in the Moot Court, after which the audience and the speakers will break into working groups to explore how different methods of environmental policy are put into practice. A round table discussion in the Moot Court will close the conference with conclusions on which policies are best suited to Canada. We are bringing together 15 speakers including lawyers, policy makers, philosophers, and academics.

Feel free to attend all or parts of the conference, but remember it is free (for students) and it sure beats classes!

\*\*\*\*\*

## Law and Policy for and Ecological Age organized by the Environmental Law Association of McGill

### Défis Juridiques et Politiques: Comment Vivre une Ere Environnementale organisé par l'Association de droit de l'environnement de McGill

WEDNESDAY / MERCREDI 10 OCT

19h30 Keynote speaker  
Elizabeth May

THURSDAY / JEUDI 11 OCT 90

10h00 - 12h00 Panel: Perspectives on  
Environment Law and Policy  
Panel: Différentes  
approches au droit de l'environnement

Paul Muldoon  
Dian Cohen  
Lorne Giroux  
Nancy Doubleday

13h30 - 16h00 Seminars:  
Putting Theory in Action  
Ateliers:  
Mettre la théorie en pratique

Michel Yergeau  
Richard Kistabish  
Jutta Brunnée  
Diane Morneau

16h30 - 17h30 Round-Table Discussion:  
Which Way for Canada?

Table Ronde: Quelle  
Direction devrait adopter le Canada?

Diane Gibeault  
James Bobbish  
Don Gamble  
Pierre-Marc Johnson  
Monique Lussier  
Toby Vigod

## L.S.A./A.E.D. Forms Committee on Quebec's Constitutional Future

by Robert M. Fabes, LL.B. III,  
V.P. External

At the L.S.A./A.E.D. meeting held on September 26, 1990, the Council formed a committee that will organize, oversee and present the compilation of student opinions concerning the constitutional and political future of Quebec within the mandate of the newly formed provincial commission that will deal with this matter. All modalities for fulfilling the committee's objectives as well as the final report are to be ratified by the L.S.A./A.E.D. The committee is comprised of the V.P. Civil, Andre Beaulieu, V.P. Common, Marie Lussier, two councillors, Arnold Cohen and Christian Immer and myself, the V.P. External, acting as chairperson.

The debate on this issue was intense and varied. Most people were concerned with the delicate nature of the problem as well as the possibility of creating division within the Faculty. In addition, everyone was well aware of the impossibility of producing a document that would accurately represent majority opinions within our varied Faculty. In light of these concerns, the committee's mandate was restricted to acting as a facilitator for those students interested in making submissions to the provincial commission. The committee will in no way edit any submission nor present its own opinion, rather it will compile all submissions and present them intact to the provincial commission.

What's the use of having this committee if it's only going to present submissions? Why can't interested students do this on their own as the provincial commission is open to all? Of what value to the

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provincial commission will be a pile of submissions? The L.S.A./A.E.D. Council believes that by having the committee facilitate the process that it will be easier for interested students to make submissions. The provincial commission's requirements can be more readily communicated to our students through this organizing committee. While the final report may not be useful in terms of coming out in favour of one

position, it is felt that it will be beneficial to the provincial commission to have knowledge of the opinions of students who are being educated in a bijuridical, bilingual environment. After all, many of our students will be participating in a future Quebec.

The exact modalities for receiving submissions have yet to be decided. One of the ways will be by written submissions, the form of which will be

determined shortly. Other ideas that have been discussed but have not yet been decided upon include holding a public forum and inviting the provincial commission to hold one of its hearings at our Faculty. Interested students can get more information from the L.S.A./A.E.D. office or from any member of the committee. Decisions of the committee will be posted around the Faculty as well as in the Quid.

## «Aboriginal People enjoy equality before the law»

by Garth Wallbridge, LLB III

The title of this article is a statement made in an article by Michael Wilhelmson in the September 11th edition of *Quid Novi*. This statement is simply not true. The response which I present here relates to only one of the many areas where serious problems of discrimination in our treatment of native peoples in this country exists today. I have selected it because it is the easiest and perhaps the most disturbing. This is because the current government undertook a revision of the Act cited below in 1985 and yet left such offensive sections in it. In the past few days the Prime Minister has indicated that another revision is about to be undertaken. A good place to start this revision would be with the quoted sections. However I do have my doubts that this will be the case.

Perhaps those of us who are to be lawyers one day, or who have reason to express ideas in a public forum, should be more aware of the situation, and in particular read the relevant parts of the Indian Act, because it certainly is unforgettable once you have looked at it closely. By way of explanation I would ask that you consider the following items. The cited sections are all from the *Indian Act R.S., 1985, c. I-5*.

### Freedom to transfer land:

Any Canadian is free to transfer land which he legally possesses, except a Treaty Indian: s. 24: «An Indian who is lawfully in possession of lands in a reserve may transfer to the band or another member of the band the right to possession of the land, but no transfer or agreement for the transfer of the right to possession of lands in a reserve is effective until it is approved by the Minister.»

### Freedom of testamentary disposition:

Any Canadian has freedom of testamentary disposition based on accepted legal principles, except a Treaty Indian: s. 42(1): «Subject to this Act, all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister...»; s. 43(a): «Without restricting the generality of section 42, the Minister may appoint executors of wills and administrators of estates of deceased Indians, remove them and appoint others in their stead.»

### Freedom to leave school:

Any Canadian in the provinces of Québec or Ontario is free to leave school at sixteen years of age, except for Treaty Indians: s. 166(2)(c): «The Minister may require an Indian who becomes sixteen years of age to attend school for such

further period as the Minister considers advisable, but no Indian shall be required to attend school after he becomes eighteen years of age.»

### Freedom to non-partisan state protection in certain circumstances:

Typically any Canadian who becomes mentally incompetent or who dies intestate has his or her affairs managed by the Public Trustee, except a Treaty Indian: s. 43(d): «...the Minister may (...) administer the property of Indians who die intestate.»; s. 51: «...all jurisdiction and authority in relation to the property of mentally incompetent Indians is vested exclusively in the Minister.»

In concluding on this issue I suggest that anyone should be able to see that the statement as set out in the title to this article is incorrect. Regrettably far too few Canadians realize the true state of affairs. I sincerely hope that we can all learn something of value from the current situation at Oka and other aboriginal communities.

### On Oka two points to consider:

There is no such thing as a sovereign government at any level in Canada today. A federal state by definition denies this possibility. In fact what obtains are levels of government which

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are for all intents and purposes sovereign in their own sphere. But there is a distribution of legislative powers between the levels of government and therefore no true sovereignty. This distribution of legislative power could be further divided to accommodate aboriginal concerns. This has been done to some degree in limited instances in some aboriginal communities already. Section 35 of the Constitution Act, 1982 is the basis for a third level of government in conjunction with sections 91 and 92 of the Constitution Act, 1867.

That a number of Mohawk spokespersons should be unable to articulate what they mean by sovereignty does not take away from the fact that the federal government has already granted away some of its legislative power to other groups giving them a greater measure of sovereignty. Why would a Prime Minister whose government has already done such a thing in the recent past with other aboriginal groups say a request for sovereignty by the Mohawks is «bizarre»?

The second point is well set out in the Globe and Mail on page A-7, 22 Sept., 1990, where there was an article titled «Property dispute 103 years old» the first sentence of which was «The Oka Indian difficulty appears to be as far from a settlement as ever.» The headline and sentence as quoted were from the July 28, 1887 edition of the Toronto Daily Mail. The article points out that not much has happened over the past hundred years to settle the issue.

Under the currently operative Comprehensive Land Claims Process of the federal government only six land claims are under negotiation at any one time. When considering that there are about 500 claims to be negotiated and that typically many years of negotiation are required to settle each of them, one knowledgeable commentator has estimated that at the current rate it will take over two hundred years to settle

them all. Only 44 of the 500 estimated claims have been settled. In the past few days the Prime Minister has said that more than six claims will now be negotiated at one time. Those of us who have an interest in this area are not sure if this means seven, or perhaps some substantial increase in the number being negotiated. We feel the former is more likely and that this is just more smoke and mirrors on the part of the government. How can we allow this state of affairs to continue? Perhaps our silence is indicative more of our complacency and self-interest than lack of knowledge.

**A REBUTTAL**

by Michael Wilhelmson, LLB III

Mr. Walbridge's points are well taken. There is no question that aboriginal people in Canada live under a different legal regime, certain provisions of which may or may not be unconstitutional. But that was my point.

Aboriginal people in Canada are entitled to equality before and under the law by virtue of article 15 of the *Canadian Charter of Rights and Freedoms*. If those provisions he quoted are unconstitutional, they can now be struck down. The Blacks in South Africa have neither the right to equality nor the means of striking at discriminatory laws.

Aboriginal people are entitled to equality before the criminal justice system. That's why those who denied Donald Marshall equal treatment were outlaws.

I submitted several articles to the *Quid* last year concerning aboriginal rights, especially demands for a separate justice system. But to my mind, these demands aren't being made for lack of equality, but because of it. Christine Deom from Kahnawake told me aboriginal people need a distinct system to avoid the disorientation aboriginal people feel in the face of a Western adversarial system, especially in the area of sentencing.

Aboriginal people have the vote and have elected men of peace like Elijah Harper in Manitoba, who showed what power aboriginal people can wield without resort to violence. The Blacks in South Africa now die for the right to put their representatives in their country's assembly.

Not only does the casual threat of violence undermine the aboriginal cause, it also unfairly prejudices the hundreds of other minority interest groups in society whose only reward for peaceful 'agitation' is to watch the forces of violence monopolize the national media.

I was certainly not suggesting that aboriginal people have economic equality or that their legitimate claims have not been frustrated.

As for the behaviour of our army, I am reminded of Alexis de Tocqueville who wrote that in a democracy in times of peace, the best, wisest and most intelligent people avoid military service.

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# What's a PIRG anyway?

by Tom Heintzman, Nat. IV

PIRG stands for Public Interest Research Group. PIRGs are student-directed and student-funded organizations working on issues in the public interest. First formed by Ralph Nader in 1970, there are now PIRGs in 26 States, 4 Provinces and Australia. Three years ago, McGill students voted to form Québec PIRG, and a year later Concordia also voted in favour of a local chapter of Québec PIRG. Although Québec PIRG has only existed for three years, it has already won a number of victories. In particular, Québec PIRG began the McGill Recycling Project, which now operates in four buildings and will soon be expanding campus wide, and it initiated the coffee mug campaign on campus to discourage the use of disposable cups.

This year, Québec PIRG will be working in four issue areas. The Housing project will continue in its effort to organize a tenant's association in the Milton Park (McGill ghetto) neighbourhood. It is also negotiating the details of a student

housing cooperative with the city and the administrations of McGill, Concordia and UQAM. New this year, there will be a project studying Violence against Women in our society. The Local Government project is working on a report documenting the structure of the municipal government. By sorting out the maze of committees and personalities running the city, the project will make it much easier for future projects to pass laws and lobby officials.

The fourth issue area is waste management, and it may be of particular interest to law students. Montréal has chosen incineration as its primary form of waste disposal. It currently burns over 90% of its residential garbage, and it is planning to build another incinerator at the east end of the island. Incineration releases thousands of toxic chemicals, including dioxin, the most carcinogenic substance known to science. The city continues to insist on this approach despite numerous reports, including several authored by the American PIRGs, demonstrating that a viable

alternative is to reduce, re-use and recycle the waste. This year, Québec PIRG will be writing a report analyzing the Montréal situation and lobbying officials to implement the report's suggestions. In addition, PIRG will be testifying at the Bureau d'Audience Publique, an environmental administrative tribunal. There is also the possibility that PIRG will sue the city for exceeding emission regulations.

Law students have always played an important role in Québec PIRG. The first Québec PIRG organizational meeting three years ago was held at the law school, and since then there has always been a strong representation of law students. Now that PIRG is moving more and more towards legislation and litigation, law students are even more important to the organization. If you would like to write a term paper on any of the PIRG issues, volunteer some time, or ask questions, come to the Québec PIRG office in Eaton Building, room 505, or phone 398-7432.

## BUTTNOSE

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